

COPY

United States District Court
SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA

v.

REDACTED

CRIMINAL COMPLAINT

DELENORE LOWELL McTARSNEY

CASE NUMBER: 1:13-mj-00611

I, Special Agent Steven T. Secor, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about the dates listed below within the Southern District of Indiana and elsewhere, the defendant DELENORE McTARSNEY, knowingly did, *(Track Statutory Language of Offense)*

transmitted in interstate and foreign commerce from the State of Indiana to the State of California and elsewhere, an electronic communication to another, specifically postings to YouTube and the communication contained a threat to injure, as follows:

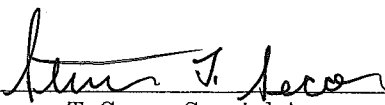
COUNT 1: In or about February, 2013: " Sure,I KNOW Judges are corrupt,but SOON you will be missing ONE JUDGE! I (now pay attention here) FULLY INTEND to FORCEFULLY MAKE "Judge Moberly" pay for her CRIMES against me! THAT CUNT IS TOAST I repeat! THAT CUNT IS TOAST! DEAD!!! FUCKING DEAD!"

COUNT 2: On or about August 10, 2013: In a post directed at Attorney Mark Small: "You ARE a PIECE of SHIT! And I WILL KILL YOU!"

in violation of Title 18, United States Code, Section 875(c). I further state that I am a Special Agent and that this complaint is based on the following facts:

See attached Affidavit

Continued on the attached sheet and made a part hereof.

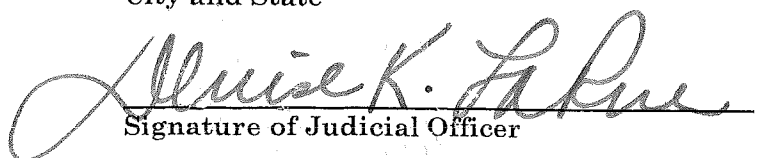

Steven T. Secor, Special Agent
Federal Bureau of Investigation

Sworn to before me, and subscribed in my presence

August 12, 2013
Date

at Indianapolis, Indiana
City and State

Denise K. LaRue, U.S. Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT

I, STEVEN T. SECOR ["AFFIANT"], being duly sworn according to law, depose and state as follows:

1. I am and have been employed as a Special Agent with the Federal Bureau of Investigation ["FBI"] since September of 2003. Prior to that time, I spent 17 weeks training to be a Special Agent at the FBI Academy in Quantico, Virginia beginning on June 1, 2003. Through the FBI, I have received extensive training related to the investigation of federal crime to include violent crime and firearms offenses, and the uses of the Internet to facilitate these crimes. I am currently assigned to the FBI Safe Streets Gang Task Force ["SSGTF"] in the Indianapolis Field Office of the FBI. In this assignment, I investigate all manner of violent crime, to include violent crime.
2. This affidavit is submitted in support of an application for a Criminal Complaint and arrest warrant authorizing the arrest of DELENORE LOWELL MCTARSNEY ["MCTARSNEY"], white male, date of birth XX/XX/1959 and Social Security Account Number XXX-XX-7587. Based on my training and experience, and based on the facts below, I believe that MCTARSNEY violated Title 18 USC, Section 875(c) in that MCTARSNEY transmitted a threat to injure another in interstate commerce. 18 U.S.C. § 875(c), makes unlawful to "transmit[] in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injury the person of another . . ."

A “threat” is a serious statement expressing an intention to inflict bodily injury upon someone, which under the circumstances would cause apprehension in a reasonable person, as distinguished from idle or careless talk, exaggeration, or something said in a joking manner. *United States v. Aman*, 31 F.3d 550, 552 (7th Cir. 1994).

3. The statements contained in this affidavit are based in part on information provided by, and conversations held with, Special Agents of the FBI; Deputy Marshals with the United States Marshals Service [“USMS”]; Task Force Officers [“TFOs”] assigned to the Indianapolis SSGTF; detectives of the Indianapolis Metropolitan Police Department [“IMPD”]; detectives and patrol officers of the Speedway Police Department [“SPD”]; witnesses; and on your AFFIANT's experience and background as a Special Agent of the FBI.
4. Your AFFIANT has not included each and every fact that has been revealed through the course of this investigation. Your AFFIANT has set forth only the facts that are believed to be necessary to establish the required foundation for this issuance of the requested Warrant for Arrest.

BACKGROUND OF THE INVESTIGATION

5. YouTube, is the video sharing site of Google. Inc., and is located in California. YouTube allows individuals to create a user account, and thereafter use the YouTube account to post comments on posted videos. As Google, Inc., and

YouTube are located in California, any posts to the comment section of a video from Indianapolis would have traveled electronically to California.

6. On or about June 13, 2012, MARK SMALL ["SMALL"], a practicing attorney in the City of Indianapolis, posted a video on YouTube, Google's Internet-based video sharing site. The video was of SMALL ["SMALL VIDEO"], who had represented a group of Indianapolis bar owners in their lawsuit to prevent implementation of a smoking ban for commercial establishments in the City of Indianapolis, giving a press conference on the steps of the United States Courthouse for the Southern District of Indiana.
7. Soon after the video was originally posted, an individual under the YouTube account or username "delimac59" began posting comments to the SMALL VIDEO. The general tone and content of these original postings revealed the commenter harbored a grudge against SMALL. A few postings under username delimac59 revealed that SMALL had once represented the user in a criminal case in what your AFFIANT believes to be Marion County (Indiana) Superior Court matter. Following is one such comment:

I hired this piece of shit to defend me! Knowing that my prosecution was "POLITICAL" he intentionally betrayed me in order to protect the presiding judge Robyn Moberly, who in turn was protecting the VERY corrupt and IGNORANT Mayor Stephen Goldsmith! Mark Small IS a COMPLETE COWARD! AND he will stab you in the BACK without warning! GUARAN "Fucking" TEED!

8. Your AFFIANT believes the matter to have been a Marion County Superior Court matter, *State of Indiana vs. Delenore McTarnnsey*, cause number 49G17-9610-CM-157036 . I have reviewed court records that show McTarsney was charged with Battery and Criminal Recklessness in 1996. A jury trial before then Marion County Superior Court Judge Robyn Moberly occurred in July 1998 and McTarsney was convicted. Mark Small represented McTarsney in a post-conviction relief petition that was unsuccessful. Judge Robyn Moberly ["Judge Moberly"], is currently a United States Bankruptcy Court Judge for the Southern District of Indiana.

9. After a few initial postings by delimac59, an individual posting under the name "mark small" posted a response to delimac59's initial comments. The comment was as follows:

It is unfortunate that a person can hide behind a "handle" on the internet. Anonymity is a convenient blind for someone to make defamatory statements. If no one can identify that person, that person may spread untruths at will. Whomever "delimac59" is, the allegations are untrue. I never have joined a "conspiracy to obstruct justice" against anyone. Please, "delimac 59," disclose your identity. Under the Indiana Constitution, truth is a complete defense for defamation.

10. Following this posting, delimac59 responded with the following posting:

OH ,by the way "Mr Small" that is not only your name,but also your character! Delimac59 also goes by the name of Delenore Lowell McTarsney and my addrress is [REDACTED] my ph # is [REDACTED] You have requested my info,indicating that I am too cowardly OR afraid to provide it! NOW you see that I am NOT

afraid NOR am I a COWARD as you obviously are! I, in 1998 hired you to defend me against a MAYOR driven "Illegal" prosecution! You stabbed me in the back,lets play! COWARD!

11. On January 16, 2013, an individual called Speedway Police Department dispatch and stated that he wanted to kill former Indianapolis Mayor Stephen Goldsmith, Judge Robyn Moberly, Judge Cheryl Boone, attorney Glen Huelskamp, attorney Mark Small, and attorney Marissa McCracken. The caller identified himself as Delenore McTarsney at [REDACTED] [REDACTED] Indiana. Upon arrival at approximately 11:33 p.m., uniformed officers from SPD spoke with a white male who identified himself as MCTARSNEY. MCTARSNEY told the officers that he had been arrested in 1996 for Criminal Recklessness and battery ultimately being found guilty in the courtroom of JUDGE MOBERLY, then a Marion County Superior Court judge. MCTARSNEY further told the responding officers that his goal was to get arrested so he could be heard. Upon further questioning by SPD, MCTARSNEY stated that he did not wish to hurt anybody. SPD did not arrest MCTARSNEY and advised him to seek legal counsel if he feels he had been unjustly prosecuted and convicted in 1996.
12. MCTARSNEY's comments to SPD coincided with delimac59's postings on YouTube. In many of these posting, delimac59 references his felony record from

what he considered and unjust and politically motivated prosecution. One such posting is reproduced below:

This PIECE of SHIT, Knowingly and Intentionally conspired against me, denying me my constitutional and civil rights! He did so to protect the EVIL Indianapolis Mayors Office, and the EVIL judges that CONSPIRED with him due to that Illegal, Political, Motivation of the "Judicial" System! All of those that take part in these crimes ARE CRIMINALS! Powerful? Yes! Conspiring? Certainly! EVIL? No Doubt! Who? Robyn Moberly, Cheryl Boone, Glenn Huelskamp, Marissa Dawson, IMPD, Public Def., Prosecutors office.

13. Approximately six (6) months ago, postings to the SMALL VIDEO began under the name "hermanblurke." The tone and content of these postings was similar to the postings of delimac59. In one posting, set out below, the person using delimac 59 acknowledged that he was also hermanblurke:

I want ALL who read this to be aware! I am ALSO delimac59 who has stated MANY posts on this site! Mr. Mark Small BLOCKED that user name so that I could NOT post any more EXPOSING info on this video! Lawyers are NOT nearly as intelligent as they :Think" they are! I simply created a different you tube account! DUH! FUCKING DUH MARKY POO! Yea! You are a FUCKING GENIUS! Worthless piece of COCK SUCKING COWARD DOG FUCK!!!! You can NOT compete with me MARKY! If you TRY it AGAIN, I will REALLY FUCK you!!

14. Approximately 6 months ago, or in or about February 2013, hermanblurke also posting the following comment:

Call the "COPS" marky! Show them the previous posts! It is ALL in writing! It can't be denied! Just like the fact that you FUCKED me, ALSO can't be denied! You see, BITCH! I have learned a LOT about the LAW, and you MUST admit ALL

or NOTHING! Sure, I KNOW Judges are corrupt, but SOON you will be missing ONE JUDGE! I (now pay attention here) FULLY INTEND to FORCEFULLY MAKE "Judge Moberly" pay for her CRIMES against me! THAT CUNT IS TOAST I repeat! THAT CUNT IS TOAST! DEAD!!! FUCKING DEAD!

Her address on [street name redacted by AFFIANT] is NO secret! Her swimming pool is no secret! I can TAKE her whenever I feel like it! Whenever I get a hardon, I WILL take and FUCK her in her COCKSUCKING WHORE HOLE! That, my friend IS a FACT!

15. Under username, hermanblurke, additional comments to the SMALL VIDEO occurred after MCTARSNEY's visit by the SPD. Several such postings are as follows:

Judge Moberly's WORST nightmare will come, when I literally STAB you in the back! She, THEN will be FULLY EXPOSED! And, you my "Trusted Attorney" will be "DECEASED"!

I have "KNIVES" MANY, MANY, Knives! Ask the Speedway Police Dept. how many "KNIVES" I have! They saw about 10! I have about 40 MORE that they did NOT see! I KNOW how to use THEM! And I WILL USE THEM!! Again, and again, and again! There is NO worse torture than KILLING a child in front of his parent! NONE! Justice is a BITCH!!

When TSHTF, where do you think my first stop will be? Moberly? Huelskamp? Small? Dawson? It's hard to say! As long as I get ALL of them "And their families" it really does NOT matter! Guns ARE hidden! Bullets ARE stocked! Payback IS a BITCH! I SWEAR IT!!!!

Oh, Marky Pool! Please relay a message to your "HERO" Judge Robyn Moberly! Tell her that simply because she has decided to "RUN" to "Bankruptcy Court" she cannot escape MY justice! I WILL hunt her down, and I WILL MURDER HER!!!

16. Approximately five (5) months ago, postings under the name hermanblurke ceased and delimac59 again began posting comments to the SMALL VIDEO.

One of the new postings under the delimac59 name was as follows:

This COCK SUCKING PIECE of SHIT,ACTUALLY called the COPS on me AFTER he INTENTIONALLY Threw my case,and I complained about it! The "PIGS" told me that IF I contacted Mr. Small again,I would be "ARRESTED" for "HARRASSMENT"! No SHIT! NO LIES! My name is Del McTarsney, and I live at [REDACTED] In. 46224 Ph# [REDACTED] Call me OR stop by! I will be glad to discuss my case with ANYONE! Not a problem!!!~

17. Three postings made by delimac59 over the last few months read as follows:

THIS! MOTHERFUCKER REALLY NEEDS to FEEL the BLADE in his THROAT! Soon! I PROMISE YOU that he WILL! And his LIL Skank Too!

Your "Hero CUNT" "Judge" Robyn L Moberly,is VERY soon to REAP what she has sown! Yes, it takes MUCH determination,and MANY bullets to kill EVIL.But IT CAN Happen! Kill the Politicians,Lawyers,Prosecutors,Judges,that MAKE it ALL Happen! IF we do NOT! They WILL KILL,and DESTROY US! MURDER is ALL WE GOT! NOTHING ELSE!

I write these posts,NOT because I am crazy but because I know that Someday ALL of these posts will be in front of a jury! Sure,Robyn Moberly will be DEAD,as will Mark Small.But I need to leave a TRACE before I start my MURDER SPREE! Because,once I start,I just MAY NOT be able to stop!!!!

18. On or about July 24, 2013, your AFFIANT and representatives of the U.S. Attorney's Office for the Southern District of Indiana and the United States Marshals Service met with SMALL. SMALL told investigators, in part, that he had once represented MCTARSNEY in a post conviction proceeding for

MCTARSNEY's 1996 criminal matter. The matter was not resolved in MCTARSNEY's favor allowing his felony conviction to stand. The Judge in MCTARSNEY's original criminal proceeding was JUDGE MOBERLY.

19. Your AFFIANT received a phone call from SMALL at approximately 5:00 a.m. on August 10, 2013. SMALL informed your AFFIANT that delimac59 had posted three new comments to the SMALL VIDEO at approximately 3:00 that morning. Your AFFIANT checked the SMALL VIDEO and found the following three postings:

You LIL COCKSUCKING BITCH! Are you aware that the "Barowners" that you INTENTIONALLY FUCKED in the ASS! Are pooling their funds to have your "Traitorous" BACK stabbing PUNK ass MURDERED! You have KNOWINGLY and INTENTIONALLY FUCKED these people OUT of their MONEY and their GOD GIVEN Constitutional RIGHTS! The ONLY way that you can LOSE, is to do so INTENTIONALLY! Just Like you did in MY CASE! You ARE a PIECE of SHIT! And I WILL KILL YOU!

You, Moberly, Boone, McCracken, AND her FAMILY! Blood IS FREE!

Where is that "Defamation" of character "Lawsuit"? You TALK a BIG game, but you have NO balls to back it up! Talk is OVER! I WILL hunt you down, I WILL DESTROY you, and HOPE for a prosecution where I can EXPOSE ALL of your EVIL DEEDS!!!! In order to save time! I REJECT ALL Plea Bargains! ALL!

Let's PLAY, BITCH!!!!

20. A review of all the postings on the SMALL VIDEO revealed 218 comments left in total. The overwhelming majority of these postings, over 200, were left by delimac59 and hermanblurke.
21. On August 10, 2013, your AFFIANT and Deputy U.S. Marshals John Pappas and Robert Jackson, interviewed MCTARSNEY at his home address, [REDACTED] [REDACTED] Indiana. Upon making contact with MCTARSNEY at the front door of his apartment, your AFFIANT asked for permission to enter and discuss an on-going matter with MCTARSNEY. MCTARSNEY consented to the entry and interview by your AFFIANT and Deputy Marshals. Upon initial entry into the apartment, your AFFIANT asked MCTARSNEY if he had any weapons. MCTARSNEY responded in the affirmative by stating he had several knives, large and small, around the apartment. A large hunting knife in a leather scabbard in the living room area was secured by interviewing Marshals. MCTARSNEY was asked if there were any other weapons in the residence and MCTARSNEY stated there were not.
22. During the interview, which was consensually recorded with a digital audio recording device, MCTARSNEY was asked why your AFFIANT would be interested in talking to him. MCTARSNEY responded "Probably about my rantings on the Internet." Asked to elaborate, MCTARSNEY related how he felt he had been conspired against in a politically motivated prosecution. Co-conspirators included his attorney, Glen Huelskamp, his subsequent public

defender, Marissa McCracken, the prosecutor, Linda Aikens (later Linda Majors after she married), attorney Mark Small whom McCracken had hired for post-conviction relief, Judge Sheryl Boone, and JUDGE MOBERLY. MCTARSNEY stated JUDGE MOBERLY was one of the people he had been "ranting about" on the Internet as JUDGE MOBERLY knew his original prosecution was politically motivated and "let it go," allowing him to be convicted.

23. MCTARSNEY admitted that delimac59 was his user ID on YouTube and that nobody else had his YouTube password that he "knew of." MCTARSNEY further stated he had gone to bed at about 6:00 a.m. on the date of the interview with your AFFIANT. MCTARSNEY also admitted he had been up at 3:00 a.m. that same morning and had been heavily drinking, often drinking up to a quart of Jim Beam whiskey two times a week.

24. Your AFFIANT read to MCTARSNEY the postings made by delimac59 at approximately 3:00 a.m. on the date of interview. MCTARSNEY stated he did not remember making those postings as he had been drinking heavily, but that they sounded "like something I'd do." MCTARSNEY stated he often posts such things because "I get to thinking about what they did and it makes me insane." Upon reading additional postings to MCTARSNEY, he admitted that he had been "posting that crap for a long time" and that there were probably "hundreds of them." Your Affiant asked if drinking alcohol causes MCTARSNEY to think about his conviction which sets him on a path to making the YouTube postings.

MCTARSNEY stated it was probably the other way around; thinking about the case causes MCTARSNEY to drink. MCTARSNEY admitted that his desktop computer in a second bedroom in his apartment was the computer he used to make the postings.

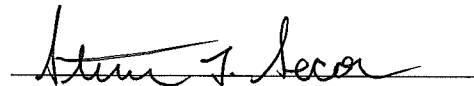
25. Toward the end of the interview, Deputy Marshal Pappas saw a package of metal arrow or bolt tips in plain view on the kitchen table adjacent to the living room area. Your AFFIANT asked MCTARSNEY what these were for and he stated they were for a bow in his closet he had recently purchased from the Internet auction site eBay.

26. MCTARSNEY was placed under arrest at the conclusion of the interview. The arrest was based on the information from the YouTube postings of delimac59 and hermanblurke and corroborated by statements made by MCTARSNEY during his interview with your AFFIANT.


27. Prior to departure for the Marion County Jail, MCTARSNEY asked if he could call a friend. Deputy Marshal Pappas allowed MCTARSNEY to make a phone call. Deputy Marshal Pappas selected MCTARSNEY's friend "Vern" from the contacts as requested by MCTARSNEY and placed the phone to MCTARSNEY's ear. MCTARSNEY told Vern that he was being arrested. Deputy Marshal Pappas overheard Vern ask why to which MCTARSNEY responded "Because of all that shit I've been posting on the Internet."

28. Based on the above information, your AFFIANT has probable cause to believe that MCTARSNEY violated Title 18 USC, Section 875(c) in that MCTARSNEY communicated a threat to injure another in interstate commerce as outlined above and as specifically outlined in paragraphs 14 and 19 above.
29. As this affidavit contains addresses, it is requested that this affidavit be placed under seal and that a redacted version be made publically available.

FURTHER YOUR AFFIANT SAITH NOT


Steven T. Secor
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me the 12th day of August, 2013.


DENISE K. LaRUE
United States Magistrate Judge
Southern District of Indiana